

FAC 90-37

BEFORE vs. AFTER

PART 7

ACQUISITION PLANNING

7.000 Scope of Part

FAR as of FAC 90-36

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(b) Determining whether to use commercial or Government resources for acquisition of supplies or services; and

(c) Deciding whether it is more economical to lease equipment rather than purchase it-

FAR as revised by FAC 90-37

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(c) Deciding whether it is more economical to lease equipment rather than purchase it **and**

(d) Determining whether functions are inherently governmental.

7.103 Agency head responsibilities.

FAR as of FAC 90-36

FAR as revised by FAC 90-37

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(p) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts are adequately managed so as to ensure effective official control over contract performance.

7.105 Contents of written acquisition plans.

FAR as of FAC 90-36

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(b) * * * * *
(9)

~~(9) through (19)~~

FAR as revised by FAC 90-37

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(b) * * * * *
(9) Inherently governmental functions. Address the consideration given to OFPP Policy Letter 92-1 (see subpart 7.5).
(10) through (20)

[NOTE: THIS IS AN ALL NEW SUBPART]

SUBPART 7.5 -- INHERENTLY GOVERNMENTAL FUNCTIONS

7.5 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions.

7.501 Definition.

“Inherently governmental function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, i.e., the discretionary exercise of Government authority, and monetary transactions and entitlements.

(a) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(1) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(2) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) Significantly affect the life, liberty, or property of private persons;

(4) Commission, appoint, direct, or control officers or employees of the United States; or

(5) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(b) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A-76 is an authoritative, nonexclusive list of functions which are not inherently governmental functions.

7.502 Applicability.

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or personal services contracts issued under statutory authority.

7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

- (1) The direct conduct of criminal investigations.
- (2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.
- (3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.
- (4) The conduct of foreign relations and the determination of foreign policy.
- (5) The determination of agency policy, such as determining the content and application of regulations, among other things.
- (6) The determination of Federal program priorities for budget requests.
- (7) The direction and control of Federal employees.
- (8) The direction and control of intelligence and counter-intelligence operations.
- (9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
- (10) The approval of position descriptions and performance standards for Federal employees.
- (11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).
- (12) In Federal procurement activities with respect to prime contracts—
 - (i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);
 - (ii) Participating as a voting member on any source selection boards;
 - (iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
 - (iv) Awarding contracts;
 - (v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);
 - (vi) Terminating contracts;
 - (vii) Determining whether contract costs are reasonable, allocable, and allowable; and
 - (viii) Participating as a voting member on performance evaluation boards.
- (13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.
- (14) The conduct of Administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.
- (15) The approval of Federal licensing actions and inspections.
- (16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—

(i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity.

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analysis, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

PART 11

DESCRIBING AGENCY NEEDS

[NOTE: THIS IS AN ALL NEW SECTION]

11.105 Purchase descriptions for service contracts.

In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see subpart 7.5) are not assigned to a contractor. These purchase descriptions shall

- (a) Reserve final determination for Government officials;
 - (b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and
 - (c) Require suitable marking of all documents or reports produced by contractors.
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PART 37

SERVICE CONTRACTING

37.102 Policy

<i>FAR as of FAC 90-36</i>	<i>FAR as revised by FAC 90-37</i>
<p>(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government).</p> <p>(b) In no event may a contract be awarded for the performance of an inherently governmental function.</p> <p>(c) The relative costs of Government and contract performance require appropriate consideration where Government performance is practicable (see Subpart 7.3).</p> <p>(d) Non-personal service contracts are proper under general contracting authority</p>	<p>(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Performance of Commercial Activities and subpart 7.3).</p> <p>(b) Agencies shall not award a contract for the performance of an inherently governmental function (see subpart 7.5).</p> <p>(c) Non-personal service contracts are proper under general contracting authority.</p>

37.114 Special acquisition requirements.

Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability, and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority. Agencies must ensure that—

(a) A sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(b) A greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see 7.503(c)).

(c) All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 Priorities for use of Government supply sources.

<i>FAR as of FAC 90-36</i>	<i>FAR as revised by FAC 90-37</i>
(a) * * * * *	(a) * * * * *
(2) * * * * *	(2) * * * * *
(ii) Mandatory Federal Supply Schedules (see Subpart 8.4) and mandatory GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1);	(ii) Mandatory Federal Supply Schedules (see subpart 8.4);
(iii) Optional use Federal Supply Schedules (see Subpart 8.4) and optional use GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1); and	(iii) Optional use Federal Supply Schedules (see subpart 8.4); and * * * * *
	(c) The statutory obligation for Government agencies to satisfy their requirements for supplies available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supply items for Government use.

8.003 Contract clause.

The contracting officer shall insert the clause at 52.208-9, Contractor Use of Mandatory Sources of Supply, in solicitations and contracts which require a contractor to purchase supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled. The contracting officer shall identify in the contract schedule the items which must be purchased from a mandatory source and the specific source.

PART 51

USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.101 Policy.

* * * * *

(c) Contracting officers shall authorize contractors purchasing supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7) to purchase such items from the Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) if they are available from these agencies through their distribution facilities. Mandatory supplies that are not available from DLA/GSA/VA shall be ordered through the appropriate central nonprofit agency (see 52.208–9(c)).

51.102 Authorization to use Government supply sources.

FAR as of FAC 90-36

(a) Before issuing an authorization to a contractor to use Government supply sources, the contracting officer shall place in the contract file a written finding supporting issuance of the authorization.

* * * * *

(c) * * * * *

(3) Approval for the contractor to use Department of Veterans Affairs (VA) supply sources from the ~~Assistant Administrator for Supply Services~~ (Code 90), Office of ~~Supply Services~~, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FAR as revised by FAC 90-37

(a) Before issuing an authorization to a contractor to use Government supply sources **in accordance with 51.101(a) or (b)**, the contracting officer shall place in the contract file a written finding supporting issuance of the authorization . **A written finding is not required when authorizing use of the Government supply sources in accordance with 51.101(c).**

* * * * *

(c) * * * * *

(3) Approval for the contractor to use Department of Veterans Affairs (VA) supply sources from the **Deputy Assistant Secretary for Acquisition and Materiel Management** (Code 90), Office of **Acquisition and Materiel Management**, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

52.208–9 Contractor Use of Mandatory Sources of Supply.

As prescribed in 8.003, insert the following clause:

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY (MAR 1996)

(a) Certain supplies to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase from People Who

Are Blind or Severely Disabled (Javits-Wagner- O' Day Act (JWOD) (41 U.S.C. 48)). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies by the time required, or if the quality of supplies provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies from other sources until the Contracting Officer has notified the Contractor that the mandatory source has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contract for JWOD central nonprofit agencies are:

(1) National Industries for the Blind (NIB) 1901 North Beauregard Street, Suite 200
Alexandria, VA 22311-1705 (703) 998- 0770

(2) NISH, 2235 Cedar Lane, Vienna, VA 22182-5200 (703) 560-6800

(End of clause)

PART 9

CONTRACTOR QUALIFICATIONS

9.406-2 Causes for debarment.

FAR as of FAC 90-36

The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:

(a) The debarring official may debar a contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

FAR as revised by FAC 90-37

The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:

(a) The debarring official may debar a contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, **tax evasion**, or receiving stolen property;

9.407-2 Causes for suspension.

FAR as of FAC 90-36

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

* * * * *

FAR as revised by FAC 90-37

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, **tax evasion**, or receiving stolen property;

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52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

FAR as of FAC 90-36

As prescribed in 9.409(a), insert the following provision:

CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, PROPOSED DEBARMENT, AND
OTHER RESPONSIBILITY MATTERS

~~(MAY 1989)~~

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

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FAR as revised by FAC 90-37

As prescribed in 9.409(a), insert the following provision:

CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, PROPOSED DEBARMENT, AND
OTHER RESPONSIBILITY MATTERS

(MAR 1996)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, **tax evasions**, or receiving stolen property; and

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52.212-3 Offeror Representations and Certifications--Commercial Items.

FAR as of FAC 90-36

As prescribed in 12.301(b)(2) insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS.
(~~OCT 1995~~)

* * * * *

(h) * * * * *

(2) * * * * *; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; * * * * *

FAR as revised by FAC 90-37

As prescribed in 12.301(b)(2) insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS.
(**MAR 1996**)

* * * * *

(h) * * * * *

(2) * * * * *; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, **tax evasion**, or receiving stolen property; * * * * *

PART 15

CONTRACTING BY NEGOTIATION

15.804-8 Contract clauses and solicitation provisions*FAR as of FAC 90-36*

* * * * *

(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that ~~certified~~ cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to ~~Subpart 31.2~~

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that ~~certified~~ cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to ~~Subpart 31.2~~

(g) *Notification of ownership changes.* The contracting officer shall insert the clause at 52.215-40, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that ~~certified~~ cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2 * * * * *

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(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required **and** for which any preaward or postaward cost determinations will be subject to Part 31.

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Part 31.

(g) *Notification of ownership changes.* The contracting officer shall insert the clause at 52.215-40, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2 * * * * *

52.215-27 Termination of Defined Benefit Pension Plans.

FAR as of FAC 90-36

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TERMINATION OF DEFINED BENEFIT PENSION PLANS (~~SEP-1989~~)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as ~~required by FAR 31.205-6(j)(4)~~. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(e).

(End of clause)

FAR as revised by FAC 90-37

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TERMINATION OF DEFINED BENEFIT PENSION PLANS (MAR 1996**)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or **gift** a credit to the Government for its equitable share **of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31.** The Contractor shall include the substance of this clause in all subcontracts under this contract which meets the applicability requirements of FAR 15.804-8(e).

(End of clause)

52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB)..

FAR as of FAC 90-36

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REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB)

(~~FEB-1995~~)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination, or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as ~~required by FAR 31.205-6(o)(6)~~. ~~Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31.~~ The Con-

FAR as revised by FAC 90-37

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REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB)

(MAR 1996**)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination, **reduction**, or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share of any amount of previously funded PRB costs which revert or inure to the Contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were

tractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804–8(f). ~~The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205-6(e)~~

(End of clause)

submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804–8(f).

(End of clause)

15.805-5 Field pricing report.

FAR as of FAC 90-36

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(c)(1) When initiating field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO). ~~When field pricing support is not available, or is exempted by agency regulations,~~ the contracting officer may initiate an audit by sending the request directly to the cognizant audit office.

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FAR as revised by FAC 90-37

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(c)(1) When initiating field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO). **If an audit is all that is needed,** the contracting officer may initiate an audit by sending the request directly to the cognizant audit office.

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15.806–3 Field pricing reports.

FAR as of FAC 90-36

(a) * * * * *

(3) The contractor has been denied access to the subcontractor's records; ~~or~~

(4) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing support for a subcontract or subcontracts at any tier is critical to a fully detailed analysis of the prime contract proposal;

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(a) * * * * *

(5) The contractor or higher tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(6) A lower tier subcontractor has been cited as having significant estimating system deficiencies.

15.810 Should-cost reviews.

15.810–1 General.

FAR as of FAC 90-36

(a) ~~Should-cost analysis is a specialized form of cost analysis which is used to evaluate the cost of~~

FAR as revised by FAC 90-37

(a) Should-cost **reviews** are a specialized form of cost analysis. **Should-cost reviews differ**

production programs by evaluating and challenging a contractor's management and operating systems or portions thereof. It does not assume the use of the contractor's existing workforce, methods, materials, facilities, or management and operating systems. It addresses significant cost drivers and may be tailored to a specific part of the contractor's operations, for example, indirect expense activities, factory layout, etc. This analysis is accomplished by an integrated team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost analysis is to promote both short- and long-range improvements in the contractor's economy and efficiency by evaluating and challenging the contractor's existing workforce, methods, materials, facilities, or management and operating systems to identify uneconomical or inefficient practices. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic price objectives for negotiation.

(e) The scope of a should-cost analysis can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale review examining specific portions of a contractor's operation. When a should-cost analysis is conducted relative to a contractor proposal, a separate audit report on the proposal is required. In determining the team size for the review, the various factors outlined in this paragraph (e) should be considered.

from traditional evaluation methods. During traditional reviews, local contract audit and contract administration personnel primarily base their evaluation of forecasted costs on an analysis of historical costs and trends. In contrast, should-cost reviews do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(b) There are two types of should-cost reviews—program should-cost review (see 15.810-2) and overhead should-cost review (see 15.810-3). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

52.810-2 Program should-cost review.

FAR as of FAC 90-36

FAR as revised by FAC 90-37

(a) Program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually incurred in the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

[NOTE: From old 15.810(b)]

(b) A should-cost analysis should be considered, particularly in the case of a major system acquisition

(b) A program should-cost review should be considered, particularly in the case of a major system

(see Part 34), when—

- (1) Some initial production has already taken place;
- (2) The contract will be awarded on a sole-source basis;
- (3) There are future year production requirements for substantial quantities of like items;
- (4) The items being acquired have a history of increasing costs;
- (5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;
- (6) Sufficient time is available to plan and conduct the should-cost analysis adequately; and
- (7) Personnel with the required skills are available or can be assigned for the duration of the should-cost analysis.

[NOTE: From old 15.810(d)]

(4) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost analysis.

[NOTE: From old 15.810(e)]

(e) In acquisitions for which a should-cost ~~analysis~~ is conducted, a separate should-cost ~~analysis~~ team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the should-cost ~~analysis~~ team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

[NOTE: From old 15.810(f)]

(f) When a should-cost ~~analysis~~ is planned, the contracting officer should state this fact (1) in the acquisition plan (see Subpart 7.1) and (2) in the solicitation

acquisition (see Part 34), when—

- (1) Some initial production has already taken place;
- (2) The contract will be awarded on a sole-source basis;
- (3) There are future year production requirements for substantial quantities of like items; (4) The items being acquired have a history of increasing costs;
- (5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;
- (6) Sufficient time is available to plan and conduct the should-cost review adequately; and
- (7) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(c) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(d) In acquisitions for which a program should-cost **review** is conducted, a separate **program** should-cost **review** team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the **program** should-cost **review** team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer (**ACO**) a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(e) When a **program** should-cost **review** is planned, the contracting officer should state this fact in the acquisition plan (see Subpart 7.1) and in the solicitation.

15.810-3 Overhead should-cost review.

(a) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate a forward pricing rate agreement (FPRA) with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(b) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

- (1) Dollar amount of Government business.
- (2) Level of Government participation
- (3) Level of noncompetitive Government contracts.
- (4) Volume of proposal activity.
- (5) Major system or program.
- (6) Mergers, acquisitions, takeovers.
- (7) Other conditions, e.g., changes in accounting systems, management, or business activity.

(c) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, identify inefficient and uneconomical practices, and recommend corrective action. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating a FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

PART 19

SMALL BUSINESS PROGRAMS

19.602-2 Issuing or denying a certificate of competency (COC).

FAR as of FAC 90-36

~~(a)~~ Within 15 business days (or a longer period agreed to by the SBA and the contracting agency) after receiving a notice that a small business concern lacks certain elements of responsibility, the SBA will take the following actions:

~~(1)~~ Inform the small business concern of the contracting officer's determination and offer it an opportunity to apply to the SBA for a certificate of competency (COC). (A concern wishing to apply for a COC should notify the SBA Regional Office for the geographical area where it is located.)

~~(2)~~ Upon timely receipt of the application and

FAR as revised by FAC 90-37

Within 15 business days (or a longer period agreed to by the SBA and the contracting agency) after receiving a notice that a small business concern lacks certain elements of responsibility, the SBA will take the following actions:

(a) Inform the small business concern of the contracting officer's determination and offer it an opportunity to apply to the SBA for a certificate of competency (COC). (A concern wishing to apply for a COC should notify the SBA Regional Office for the geographical area where it is located.)

(b) Upon timely receipt of the application and

required documentation, send an SBA team to visit the concern to investigate it only for the specific elements of responsibility that the agency notice specified as lacking, and to make recommendations to the SBA Regional Administrator.

(3) If the Regional Administrator plans to issue or recommend issuance of a COC, provide advance notice of the proposed action to the contracting officer together with a brief statement of the reasons for it. If the contracting officer disagrees with the proposal, resolve the disagreement as provided in 19.602-3.

~~—(b) The SBA Regional Administrator will—~~

~~—(1) Notify the concern and the contracting officer that the COC is denied;~~

~~—(2) If the contract is for \$500,000 or less, issue the COC; or~~

~~—(3) If the contract is for more than \$500,000 forward a recommendation to the SBA Central Office that a COC be issued.~~

~~—(c) Upon receipt of a recommendation from the Regional Administrator to issue a COC, the SBA Central Office may—~~

~~—(1) Notify the concern and the contracting officer that the COC is denied; or~~

~~—(2) Send the COC to the contracting officer and advise the concern, through the Regional Office, of the action.~~

required documentation, send an SBA team to visit the concern to investigate it only for the specific elements of responsibility that the agency notice specified as lacking, and to make recommendations to the SBA Regional Administrator.

(c) If the Regional Administrator plans to issue or recommend issuance of a COC, provide advance notice of the proposed action to the contracting officer together with a brief statement of the reasons for it. If the contracting officer disagrees with the proposal, resolve the disagreement as provided in 19.602-3.

(d) Notify the concern and the contracting officer that the COC is denied or **is being issued.**

19.702 Statutory requirements..

* * * * *

(d) As authorized by 15 U.S.C. 637(d)(11), certain costs incurred by a mentor firm in providing developmental assistance to a Prote´ge´ firm under the Department of Defense Pilot Mentor-Prote´ge´ Program, may be credited as subcontract awards to a small disadvantaged business for the purpose of determining whether the mentor firm attains a small disadvantaged business goal under any subcontracting plan entered into with any executive agency. However, the mentor firms must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology, OUSD (A&T)SADBU, Room 2A340, The Pentagon, Washington, DC 20301-3061, (703) 697-1688, before developmental assistance costs may be credited against subcontract goals.

52.244-5 Competition in Subcontracting.

FAR as of FAC 90-36

* * * * *

COMPETITION IN SUBCONTRACTING
(APR 1984)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(End of clause)

FAR as revised by FAC 90-37

* * * * *

COMPETITION IN SUBCONTRACTING
(JAN 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Prote'ge' Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its prote'ge's.

(End of clause)

19.705-2 Determining the need for a subcontracting plan.

FAR as of FAC 90-36

* * * * *

(d) ~~Due to their unique circumstances, major system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate negotiating subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns to participate and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (1) may require offerors to include proposed subcontracting plans in their initial proposals and (2) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.~~

FAR as revised by FAC 90-37

* * * * *

(d) **In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers, or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small, small disadvantaged and women-owned small business concerns to participate, and the burden placed on offerors.**

19.708 Solicitation provisions and contract clauses.

FAR as of FAC 90-36

* * * * *

(b)(1) * * * * * (iii) are required to include the clause at 52.219-8, Utilization of Small Business Con-

FAR as revised by FAC 90-37

* * * * *

(b)(1) * * * * * (iii) are required to include the clause at 52.219-8, Utilization of Small Business Con-

cems and Small Disadvantaged Business Concerns, unless the acquisition ~~has been~~ set aside for small business or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

cems and Small Disadvantaged Business Concerns, unless the acquisition ~~is~~ set aside for small business or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I. **When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.**

52.219-9 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.

* * * * *

Alternate II (MAR 1996). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause: (c) Proposals submitted in response to this solicitation shall include a subcontracting plan, which separately addresses subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

PART 28

BONDS AND INSURANCE

28.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

~~28.311-1 Solicitation provision.~~

~~—The contracting officer shall insert the provision at 52.228-6, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated, and the clause at 52.228-7, Insurance—Liability to Third Persons, is included.~~

~~28.311-2 Contract clause.~~

28.311-1 Contract clause.

FAR as of FAC 90-36

In accordance with agency acquisition regulations, the contracting officer shall insert the clause at 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated. If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution, the contracting officer shall use the clause with its Alternate I. If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution, the contracting officer shall use the clause with its Alternate II.

FAR as revised by FAC 90-37

In accordance with agency acquisition regulations, the contracting officer shall insert the clause at 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated. ~~If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution, the contracting officer shall use the clause with its Alternate I. If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution, the contracting officer shall use the clause with its Alternate II.~~

~~28.311-3 Agency solicitation provisions and contract clauses.~~

28.311-2 Agency solicitation provisions and contract clauses.

Section 52.228-6 is removed and reserved.

52.228-7 Insurance—Liability to Third Persons.

FAR as of FAC 90-36

As prescribed in 28.311-2, insert the following clause:

**INSURANCE—LIABILITY TO THIRD PERSONS
(APR 1984)**

(a)(1) Except as provided in subparagraph (2) ~~immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h))~~, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insur-

FAR as revised by FAC 90-37

As prescribed in 28.311-1, insert the following clause:

**INSURANCE—LIABILITY TO THIRD PERSONS
(MAR 1996)**

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under

ance, and such other insurance as the Contracting Officer may require under this contract.

* * * * *

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)); the Contractor shall be reimbursed—

* * * * *

~~—Alternate I (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *partially* immune from tort liability as a State agency or as a charitable institution, add the following paragraph (h) to the basic clause:~~

~~—(h) Notwithstanding paragraphs (a) and (c) of this clause—~~

~~—(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and~~

~~—(2) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; *provided*, that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.~~

~~(End of clause)~~

~~(R 1-7.404-9(a))~~

~~(R 7-402.26 1962 SEP)~~

~~—Alternate II (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *totally* immune from tort liability as a State agency or as a charitable institution, substitute the following paragraphs (a) and (b) for paragraphs (a) through (g) of the basic clause:~~

~~—(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.~~

~~—(b) If any suit or action is filed, or if any claim is~~

this contract.

* * * * *

(c) The Contractor shall be reimbursed—

* * * * *

made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)
(R 7-402.26(b) 1960 OCT)
(R 1-7.404-9(b))

52.245-7 Government Property (Consolidated Facilities).

FAR as of FAC 90-36

* * * * *

GOVERNMENT PROPERTY (CONSOLIDATED
FACILITIES)
(APR 1984)

* * * * *

(j) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-6, Insurance—Immunity from Tort Liability, or at FAR 52.228-7, Insurance—Liability to Third Persons.

* * * * *

FAR as revised by FAC 90-37

* * * * *

GOVERNMENT PROPERTY (CONSOLIDATED
FACILITIES)
(MAR 1996)

* * * * *

(j) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-7, Insurance—Liability to Third Persons

* * * * *

52.245-10 Government Property (Facilities Acquisition)

FAR as of FAC 90-36

* * * * *

GOVERNMENT PROPERTY (FACILITIES
ACQUISITION)
(APR 1984)

* * * * *

(f) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the

FAR as revised by FAC 90-37

* * * * *

GOVERNMENT PROPERTY (FACILITIES
ACQUISITION)
(MAR 1996)

* * * * *

(f) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the

facilities, except as specified in the clause at FAR 52.228-6, Insurance—Immunity from Tort Liability, or at FAR 52.228-7, Insurance—Liability to Third Persons
* * * * *

facilities, except as specified in the clause at FAR 52.228-7, Insurance—Liability to Third Persons.
* * * * *

PART 31

CONTRACT COST PRINCIPLES AND PROCEDURES

31.002 Availability of accounting guide.

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the guide entitled “Guidance for New Contractors” (DCAAP 7641.90). The guide is available from: Headquarters, Defense Contract Audit Agency, Operating Administrative Office, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060-6219; Telephone No. (703) 767-1066; Telefax No. (703) 767-1061.

31.205-41 Taxes.

FAR as of FAC 90-36

* * * * *

(b) * * * * *

(6) Taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended.

* * * * *

FAR as revised by FAC 90-37

* * * * *

(b) * * * * *

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

* * * * *

44.201-2 Cost-reimbursement and letter prime contracts.

FAR as of FAC 90-36

(a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for subcontracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than \$10,000 or of any items of facilities, or (2) that have experimental, developmental, or research work as one of their purposes. * * * * *

FAR as revised by FAC 90-37

(a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for subcontracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than \$25,000 or of any items of facilities, or (2) that have experimental, developmental, or research work as one of their purposes. * * * * *

44.302 Requirements.

FAR as of FAC 90-36

(a) Except as provided in paragraph (b) below, a CPSR shall be conducted for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed \$10 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulation). Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$10 million review level if such action is considered to be in the Government's best interest.

* * * * *

FAR as revised by FAC 90-37

(a) Except as provided in paragraph (b) below, a CPSR shall be conducted for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed \$25 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulation). Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if such action is considered to be in the Government's best interest.

* * * * *

52.244-2 Subcontracts (Cost-Reimbursement and Letter Contracts).

FAR as of FAC 90-36

As prescribed in 44.204(b), insert the following clause:

**SUBCONTRACTS (COST-REIMBURSEMENT
AND LETTER CONTRACTS)
(JUL 1985)**

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either \$25,000 or 5 percent of the total estimated cost of this contract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or of any items of facilities.

FAR as revised by FAC 90-37

As prescribed in 44.204(b), insert the following clause:

**SUBCONTRACTS (COST-REIMBURSEMENT
AND LETTER CONTRACTS)
(MAR 1996)**

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either \$25,000 or 5 percent of the total estimated cost of this contract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$25,000 or of any items of facilities.

(b)(1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed ~~\$10,000~~, including any fee, (ii) is proposed to exceed \$100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

* * * * *

(b)(1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed **\$25,000**, including any fee, (ii) is proposed to exceed \$100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

* * * * *